

**ASPEN SPRINGS
643-LOT MAJOR SUBDIVISION AND EIGHT VARIANCE REQUESTS**

STAFF REPORT FOR PLANNING BOARD

CASE PLANNERS: Renee Van Hoven and Benjamin Howell *RVB*

**REVIEWED/
APPROVED BY:** Karen Hughes *KH*

**PUBLIC HEARINGS/
MEETINGS:**

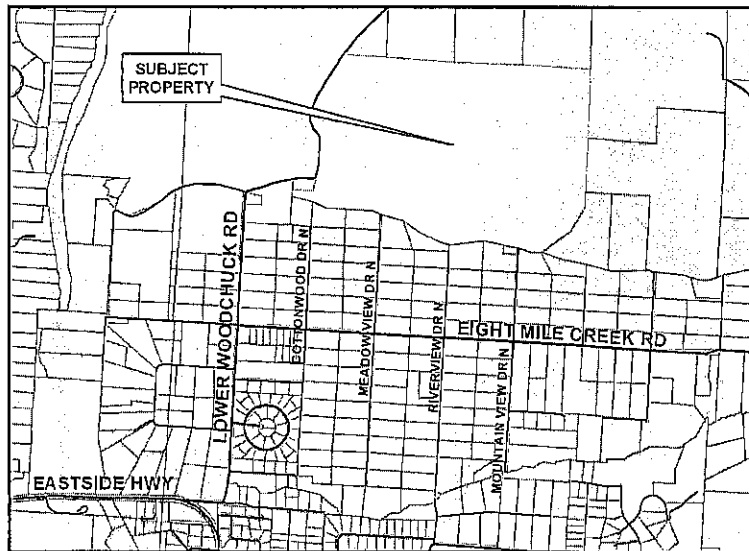
RCRP Plat Evaluation:	June 7, 2006
RCPB Public Hearing:	July 5, 2006
Deadline for PB recommendation to BCC:	August 2, 2006
BCC Public Meeting:	9:00 a.m. August 22, 2006
(Unless PB delays decision)	
Deadline for BCC action (60 working days):	August 31, 2006

OWNER: Stanley C. and Ellen Hendricksen
PO Box 267
Lolo, MT 59847

APPLICANT: Wesmont Builders/Developers, Inc.
PO Box 17437
Missoula, MT 59808

REPRESENTATIVE: WGM Group, Inc., 728-4611
PO Box 16027
Missoula, MT 59808-6027

LOCATION OF REQUEST: The property is located northeast of Florence off Lower Woodchuck Road (Map 1).



Map 1: Location Map
(Source Data: Ravalli County Planning Department)

**LEGAL DESCRIPTION
OF PROPERTY:**

Tract 3 of Certificate of Survey No. 472577-R, Tract 1 of Certificate of Survey No. 538102-ED, Tract 1 of Certificate of Survey No. 473719-R, located in Section 6, T10N, R19W, and Tract 2 of Certificate of Survey No. 484300-R, located in Section 5, T10N, R19W, and the S2 of the NW4 of the SW4, and a portion of the SW4 of the SW4 of Section 5, T10N, R19W, P.M.M., Ravalli County, Montana.

**APPLICATION
INFORMATION:**

The subdivision and variance applications were determined sufficient on June 15, 2006. Agencies were notified of the subdivision and variances and comments received by the Planning Department that are not in the application packet are Exhibits A-1 through A-20.

LEGAL NOTIFICATION:

A legal advertisement was published in the Ravalli Republic on June 20, 2006. Notice of the project was posted on the property and property owners adjacent to the property were notified by certified mail postmarked June 20, 2006. Public comments received by the Planning Department are Exhibits B-1 through B-5.

**DEVELOPMENT
PATTERN:**

Subject property	Vacant/Agriculture
North	Vacant/Agriculture
South	Residential
East	Vacant/Agriculture
West	Agriculture

RAVALLI COUNTY PLANNING BOARD

JULY 5, 2006

ASPEN SPRINGS

643-LOT MAJOR SUBDIVISION AND EIGHT VARIANCE REQUESTS

INTRODUCTION

Aspen Springs is a 643-lot (671 maximum units including condominiums) subdivision of approximately 392 acres located northeast of Florence off Lower Woodchuck Road near the border of Ravalli County with Missoula County. The project is proposed to be completed in 33 phases over 10 to 20 years. The proposed density at build-out is one unit per 0.58 acres and according to the application, the average lot size of the residential lots is 10,466 square feet or 0.24 acres. A total of 163 acres are proposed to be open space.

This is the first subdivision of this size and scope to be proposed in Ravalli County. In 2005, the average lot size of all the subdivisions reviewed by Ravalli County was 1.50 acres. If the average lot size of Aspen Springs was 1.50 acres and no open space was proposed, the project would consume 1,000 acres instead of the 392 acres that are proposed. The Montana Board of Housing (MBOH) states: "All rapidly-growing communities need to consider higher density housing developments on communal water and sewer systems to offer the only opportunity for new construction homes to fit the incomes of many MBOH buyers." (Exhibit A-18) MBOH indicated that Aspen Springs may be providing what they consider to be affordable housing in Ravalli County in a phone conversation with staff on June 16, 2006. Encouraging higher density development in this area may protect agriculture, the natural environment, and wildlife habitat in other areas of Ravalli County.

The Planning Department, the Planning Board, and the Board of County Commissioners are to review this subdivision against the six criteria, as mandated by State Law. While it is challenging and time consuming to review a subdivision of this magnitude, phasing allows for the review of the cumulative impacts of the entire subdivision on the six criteria. The alternative would be the review of 33 individual subdivisions, which would make it difficult to identify the impacts from the project as a whole.

Aspen Springs offers higher density housing with planned community infrastructure and open space located relatively close to existing services. While there could be many benefits to Ravalli County with this kind of development, there are several outstanding issues. The Montana Department of Transportation (MDT) has identified impacts of Aspen Springs on the intersections of Eight Mile Creek Road with Eastside Highway and Eastside Highway with US Highway 93 that have not been mitigated, a road connection to the south of Aspen Springs to provide for efficient traffic flow is not proposed, impacts to important wildlife habitat, natural drainage features, and the Ravalli County Sheriff's Office have not been mitigated. A Level of Service (LOS) analysis on Lower Woodchuck Road, which was recommended by the consulting engineer to the Ravalli County Road and Bridge Department, has not been submitted and there is no design for a pedestrian/bike pathway leading from the subdivision to Eight Mile Creek Road. Staff is recommending denial of three out of eight variances that deal with off-site roads providing access to the subdivision. If the outstanding issues are resolved and the variances are denied, so proper road infrastructure is in place for this development, the Planning Department will probably be able to recommend approval of this subdivision.

STAFF RECOMMENDATIONS FOR ADDITIONAL INFORMATION REQUIRED TO ADDRESS IMPACTS OF ASPEN SPRINGS ON THE SIX REVIEW CRITERIA

1. To mitigate impacts on local services, the developer shall submit a new design with a road connection from Aspen Springs south to one of the roads in the adjacent Riverview Orchards Subdivision to provide for road connectivity and efficient traffic flow.
2. To mitigate impacts on local services, natural environment, wildlife and wildlife habitat, and public health and safety, the developer shall submit a new design removing Lots E124 through E151 and Lots B147 through B149. Staff does not recommend that the density of Aspen Springs is altered, but that the lots are clustered away from the Elk Winter Range, natural drainages, and steep slopes.
3. To mitigate impacts on local services and public health and safety, the applicant shall work with MDT to identify and mitigate impacts of Aspen Springs on the intersection of Eastside Highway and US Highway 93.
4. To mitigate impacts on local services and public health and safety, the applicant shall work with the Ravalli County Sheriff's Office to identify and mitigate the impacts of Aspen Springs on law enforcement services.
5. To mitigate impacts on local services and public health and safety, the applicant shall provide a design and specifications for a bicycle/pedestrian pathway between the furthest subdivision access point and the intersections of Lower Woodchuck Road with Eight Mile Creek Road and the southern connecting road with Eight Mile Creek Road.
6. To mitigate impacts of granting Variance Request #7, the applicant shall complete a Level of Service (LOS) analysis for the traffic capacity of Lower Woodchuck Road and the consulting engineer to the Ravalli County Road and Bridge Department shall review the analysis to ensure that the proper LOS is maintained at subdivision build-out.

RECOMMENDED MOTIONS

If and when the necessary information is received, the Planning Staff will probably make the following recommendations:

1. That the variance request from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow the developer to complete the project in 33 phases over 22 years with a phasing plan instead of two phases to be completed within four years, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
2. That the variance request from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow, be **denied**, based on the findings of fact and conclusions of law in the staff report.
3. That the variance request from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations to allow a no-build zone of 50 feet centered on the high pressure gas line traversing the property instead of a 200-foot no-build zone, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
4. That the variance request from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, which requires that each lot has a building site of at least 7,500 square feet, be **approved**, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.

5. That the variance request from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for six flag lots, be **approved**, based on the findings of fact and conclusions of law in the staff report.
6. That the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the on-site roads to be reviewed under the new road standards, as amended August 4, 2005, be **approved**, without design exceptions, based on the findings of fact and conclusions of law in the staff report and subject to the conditions in the staff report.
7. That **no decision be made** on the variance request from Article Four of Chapter Five of the Ravalli County Subdivision Regulations to allow the developers to improve the graveled portion of Lower Woodchuck Road to meet the new road standards, with one design exception, and to pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet the new standards until the LOS analysis has been reviewed.
8. That the variance request from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road leading to the property is improved to meet county standards, be **denied**, based on the findings of fact and conclusions of law in the staff report.

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR FIRST PHASE

1. A document entitled "Notifications to Future Property Owners" that includes the following notifications and the attachments that will apply to the entire subdivision shall be included in the submittal of the final plat for the first phase to the Planning Department and filed with the final plat:

Notification of Proximity to Agricultural Operations. This subdivision is located near existing agricultural activities. Some may find activities associated with normal agricultural activities objectionable and dangerous. (*Effects on Agriculture*)

Notification of Storm Water Drainage Easements. Within this subdivision there are storm water drainage easements. No structures may be placed within these easements that are not needed for storm water management. (*Effects on Agricultural Water User Facilities and Local Services*)

Limitation of Access onto Lower Woodchuck Road. A "no ingress/egress" restriction is located along the Lower Woodchuck Road frontage of the subdivision, excepting the approaches approved by the Ravalli County Road and Bridge Department, which precludes vehicular access onto this County-maintained road. This limitation of access may be lifted or amended with approval of the County. (*Effects on Local Services and Public Health and Safety*)

Notification of Road Maintenance. Ravalli County, the State of Montana, or any other governmental entity does not maintain the internal roads of Aspen Springs or the private road leading to the subdivision and therefore does not assume any liability for improper maintenance or the lack thereof. A Road Maintenance Agreement for Aspen Springs was filed with this subdivision and outlines what parties are responsible for maintenance and under what conditions. (*Effects on Local Services and Public Health and Safety*)

Notification of No-Build Zones. Within this subdivision there are no-build zones to protect natural drainages, as shown on the final plat. No building or structure, with the exception of

fences, may be constructed in these areas. Roads, trails, and utility crossings of these areas are permitted. (*Effects on Natural Environment and Wildlife and Wildlife Habitat*)

Notification of Proximity to Natural Gas Supply Line, Easement and No-Build Zone. A 10" diameter natural gas main supply line is buried within a 50-foot wide easement and traverses the western portion of Aspen Springs, as shown on the filed subdivision plat. The final subdivision plat identifies a 50-foot wide no-build zone, which applies to residential, commercial and/or industrial structures, centered on the gas line. Northwestern Energy has the authority and jurisdiction to install, operate and maintain the existing natural gas pipeline traversing this subdivision in accordance with the Department of Transportation's Code of Federal Regulations and the standards within the Gas Transmission Right-of-Way Development Provisions. For further information regarding the gas line, please contact the Northwestern Energy Company, 1140 South First Street, Hamilton, Montana, 59840, (406) 542-5970. (*Effects on Public Health and Safety and Variance #3*)

Notification of No-Build/Alteration Zones. Within this subdivision there are no-build/alteration zones on Lots E67, E68, and E196, as shown on the plat, to restrict building on slopes greater than 25%. No new structure, with the exception of fences, may be constructed in these areas and the vegetation shall remain in its natural condition. (*Effects on Public Health and Safety*)

Notification of Severe Soils. Within this subdivision there are areas of the property identified as potentially having soils rated as severe for roads and building construction. The approximate locations of these areas can be found on a reduced copy of the final plat and descriptions of the severe soils in question which are included as exhibits to this document. (The applicants shall include the exhibits as attachments) (*Effects on Public Health and Safety*)

2. Protective covenants for the entire Aspen Springs Subdivision shall be submitted with the final plat for the first phase that include the following provisions:

Living with Wildlife. (See Exhibit A-13 for the required provisions) (*Effects on Agriculture and Wildlife and Wildlife Habitat*)

Waiver of Protest to Creation of RSID/SID. Owners and their successors in interest waive all rights in perpetuity to protest the creation of a city/rural improvement district for any purpose allowed by law, including, but not limited to a community water system, a community waste water treatment system, and improving and/or maintaining the roads that access the subdivision including related right-of-way, drainage structures, and traffic control signs. (*Effects on Local Services and Public Health and Safety*)

Required Posting of County-Issued Addresses for Lots within this Subdivision. The Florence Rural Fire District has adopted the Uniform Fire Code 901.4.4 which requires the lot owners to post County-issued addresses at the intersection of the driveway leading to the primary residence and the road providing access to the lot as soon as construction on the residence begins. (*Effects on Local Services and Effects on Public Health and Safety*)

Access Requirements for Lots within this Subdivision. The Florence Rural Fire District has adopted the Uniform Fire Code. All accesses, including driveways to residences over 150' in length, must have a minimum unobstructed travel surface width of 20', a vertical clearance of 13'6" and an all weather surface that can accommodate the weight of a fire truck, approximately 40,000 lbs. to meet requirements of the Uniform Fire Code. Please contact the

Florence Rural Fire District for further information on the requirements of the Florence Rural Fire District and/or the Uniform Fire Code. *(Effects on Local Services and Effects on Public Health and Safety)*

Primary Heat Source. The primary heat source for the newly constructed residences in this subdivision shall be at least 75% efficient. *(Effects on Natural Environment)*

Control of Noxious Weeds. Lot owners shall control the growth of noxious weeds on their respective lot(s). *(Effects on Natural Environment)*

Lighting for New Construction. Full cut-off lighting shall be required for any new construction within this subdivision. A full cut-off fixture means fixtures, as installed, that are designed or shielded in such a manner that all light rays emitted by the fixture, either directly from the lamps or indirectly from the fixture, are projected below a horizontal plane through the lowest point on the fixture where light emitted. The source of light is fully shielded, top and sides, so as not to emit light upwards or sideways, but only allowing light to shine down towards the subject that is to be lighted. Spotlighting of flag poles shall be permitted. *(Effects on Public Health & Safety)*

Radon Exposure. The owner understands and accepts the potential health risk from radon concentrations, which are presently undetermined at this location. Unacceptable levels of radon can be reduced through building design and abatement techniques incorporated into structures. *(Effects on Public Health and Safety)*

Side Yard Setbacks. To prevent the spread of fire, structures shall be set back a minimum of five feet from side yard property boundaries. *(Variance #4)*

Amendment. The covenants filed with the final plat shall state that written Governing Body approval shall be required for amendments to provisions of the covenants that were required to be included as a condition of subdivision approval. *(Effects on all six criteria)*

3. A Beneficial Water Use Permit from the Department of Natural Resources (DNRC) shall be submitted prior to the final plat approval of the first phase. *(Effects on Agricultural Water User Facilities and Natural Environment)*
4. The applicant shall submit \$88,182.00 to Ravalli County, which will be paid to MDT for improvements to the round-about at the intersection of Eight Mile Creek Road with Eastside Highway, prior to the final plat for the first phase. *(Effects on Local Services and Public Health and Safety)*
5. The developer shall reconstruct Lower Woodchuck Road from Eight Mile Creek Road north to the last northern access of the subdivision to meet County Standards, as amended August 4, 2005, with a design exception to allow the design speed on Lower Woodchuck Road at the intersections with Slack Lane to be 20 mph and Sapphire Lane to be 35 mph prior to final plat approval of the first phase. No other design exceptions have been submitted. *(Effects on Local Services and Public Health and Safety and Variance #7)*
6. The Road Maintenance Agreement shall include the maintenance road leading to the water tank from Sweet Grass Hills Road. The Road Maintenance Agreement shall also state that the other parcels which may have beneficial use of the internal subdivision roads shall be allowed to join as members of the agreement without the consent of the current members once

connecting roads are developed within the easements. (*Effects on Local Services and Public Health and Safety*)

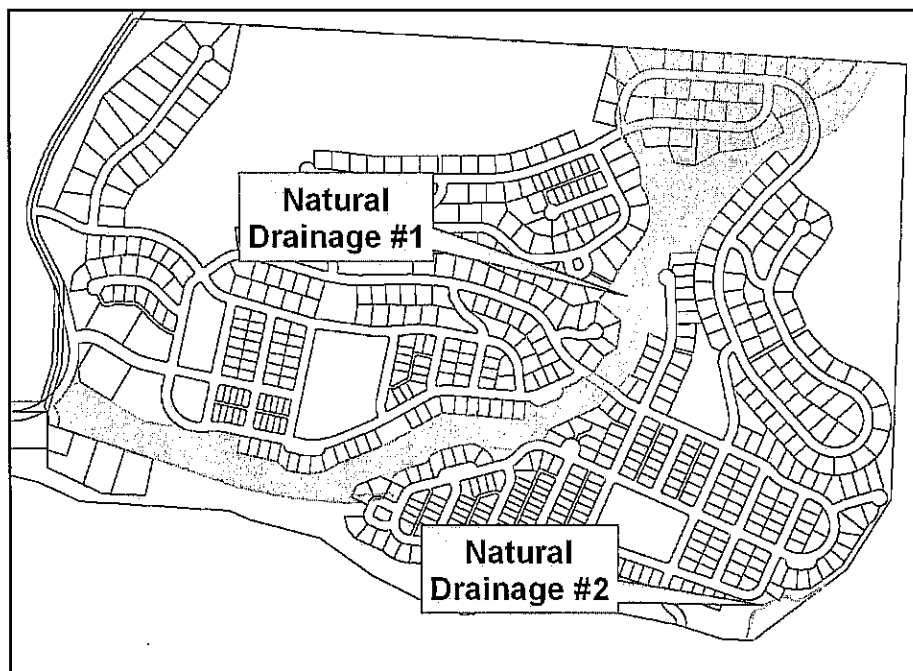
7. The applicant shall submit a letter from NorthWestern Energy (NWE) stating that the street crossings of the high pressure gas line will not be a risk to public health and safety prior to the final plat approval of the first phase. (*Effects on Public Health and Safety and Variance #3*)
8. The developer shall install advanced warning signs in conformance with the Federal Manual on Uniform Traffic Control Devices near the curves where Lower Woodchuck Road intersects with Slack Lane and Sapphire Lane, as approved by the Ravalli County Road and Bridge Department, prior to the final plat approval of the first phase. (*Variance #7*)
9. The developer shall install guardrails at the curves where Lower Woodchuck Road intersects with Slack Lane and Sapphire Lane prior to final plat approval of the first phase. (*Variance #7*)

RECOMMENDED MITIGATING CONDITIONS OF APPROVAL FOR EACH PHASE

10. The applicant shall provide for a 20-foot wide drainage easement centered on the natural drainage traversing the southeast portion of the property and Lot B227 on the final plat for Phase 26. (*Effects on Agricultural Water User Facilities*)
11. A no ingress/egress zone shall be place along the Lower Woodchuck Road frontage of the subdivision, excepting the approaches approved by the Ravalli County Road and Bridge Department, on the final plat for any phases with Lower Woodchuck Road frontage. (*Effects on Local Services and Public Health and Safety*)
12. The existing 60-foot wide private road and utility easement in the southeastern corner of Aspen Springs shall also be a conditional 60-foot wide public road and utility easement on the final plat of Phase 26 and a conditional 60-foot wide public road and utility easement shall be shown on the final plat connecting the proposed cul-de-sac of Ruby Court to the eastern property boundary of Aspen Springs on the final plat of Phase 28. The following statement shall be on the final plats in reference to these easements: "Development of the roads to meet County Standards within the public road and utility easements connecting this subdivision to the property to the east shall be the responsibility of the property owner(s) to the east. Furthermore, when these easements are developed and opened to the property(ies) to the east, those properties that have beneficial use of the easements shall be annexed into the road maintenance agreement for the internal subdivision roads." (*Effects on Local Services and Public Health and Safety*)
13. Internal road easements shall be labeled as public road and utility easements on the final plat of each phase. (*Effects on Local Services*)
14. Stop signs and road name signs shall be installed and approved by the Ravalli County Road and Bridge Department for each phase. (*Effects on Local Services and Public Health and Safety*)
15. The subdividers shall include an RSID/SID waiver in a notarized document filed with the subdivision plat of each phase that states the following: Acceptance of a deed for a lot within this subdivision shall constitute the assent of the owners and any successors in interest to any future RSID/SID, based on benefit, for a community wastewater system, community water system, or upgrading roads leading to or within the subdivision, including but not limited to

paving, curbs and gutters, non-motorized transportation facilities, street widening, and drainage facilities. *(Effects on Local Services and Public Health and Safety)*

16. The maintenance road leading to the water tank shall be constructed to have a minimum 12-foot wide compacted, gravel travel surface prior to the final plat of the phase in which the water tank is constructed. *(Effects on Local Services and Public Health and Safety)*
17. The applicant shall submit a letter or receipt from the Florence-Carlton School District stating that they have received an amount per lot (to be recommended by the Planning Board and approved by the Board of County Commissioners) for each phase to be submitted prior to the final plat approval of each phase. *(Effects on Local Services)*
18. The applicants shall meet the water supply requirements for the Florence Rural Fire District, which is a 1,000-gallon per minute water supply or a 2,500 gallon per lot water storage for each phase prior to the final plat approval of each phase. Alternatively, the applicants shall contribute \$500 per lot for each phase and/or a land donation, as approved by the Fire District, and provide a letter or receipt from the Florence Rural Fire District that the contribution has been made prior to the final plat approval of each phase. *(Effects on Local Services & Public Health and Safety)*
19. No-build zones shall be shown on the natural drainage that traverses from the northeastern corner of the property to the southwestern portion of the property (Natural Drainage #1) and on the natural drainage traversing the southeastern corner of the property (Natural Drainage #2) on the final plat of each applicable phase. Map 2 delineates the general area of both Natural Drainage #1 and Natural Drainage #2 that should be a no-build zone. *(Effects on Natural Environment and Wildlife and Wildlife Habitat)*



Map 2: No-build Zones on Natural Drainages
(Source Data: Ravalli County Planning Department)

20. A 50-foot wide no-build zone centered on the high pressure gas line traversing the western portion of Aspen Springs shall be shown on the final plat of each phase, as applicable. *(Effects on Public Health and Safety and Variance #3)*
21. The applicant shall construct temporary turnarounds with a turning radius of 50 feet and a compacted all weather travel surface that can accommodate emergency services vehicles for the internal roads prior to the final plat approval for each phase, unless a permanent cul-de-sac or through-road is constructed. *(Effects on Public Health and Safety)*
22. No-build/alteration zones shall be shown on the slopes greater than 25% in Lots E67, E68, and E196 on the final plat of each applicable phase. *(Effects on Public Health and Safety)*
23. The subdividers shall provide evidence with the final plat submittal that they have applied for County-issued addresses for each lot within this subdivision prior to the final plat approval of each phase. *(Effects on Public Health and Safety)*
24. The proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval prior to the final plat approval of each phase. *(Variance #1)*
25. Easements for infrastructure necessary for each phase shall be provided for on the final plat of each phase. *(Variance #1)*
26. Infrastructure necessary for each phase shall be completed prior to filing each phase even if it is not scheduled to be finished until a future phase. *(Variance #1)*
27. The applicant shall construct all internal roads to meet the County road standards, as amended August 4, 2005, with no design exceptions. *(Variance #6)*

SUBDIVISION REPORT

COMPLIANCE WITH PRIMARY SUBDIVISION REVIEW CRITERIA

CRITERION 1: EFFECTS ON AGRICULTURE

Findings of Fact:

1. The property is located approximately three miles northeast of the Town of Florence.
2. The proposal is 643 lots on a total of approximately 392 acres (approximately 161 acres of lots, 68 acres of streets, and 163 acres of open space). Seven of the lots are proposed to have mixed use condominiums for a maximum project total of 671 units. The average lot size of Aspen Springs is 0.25 acres and the proposed density at build-out is approximately one unit per 0.58 acres.
3. The density of the Riverview Orchards Subdivision to the south of Aspen Springs is one unit per five acres. If Aspen Springs was a proposed subdivision of similar density to the Riverview Orchards Subdivision, 3,355 acres (about 8 times the total acreage of Aspen Springs) would be required for 671 units.
4. There are no soils on the property that are listed as Prime Farmland Soils or Farmland of Statewide Importance by the U.S. Department of Agriculture, Natural Resources Conservation Service (NRCS).
5. The property is located in an area of mixed of residential and agricultural uses. To mitigate impacts on agriculture, a notification of proximity to agricultural operations shall be included in the Notifications Document filed with the first phase and the protective covenants, also filed with the first phase, shall include a provision requiring homeowners to keep pets confined to the house, a fenced yard, or in an outdoor kennel (Conditions 1 and 2).
6. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on agriculture. (Variance #1)

Conclusions of Law:

1. With the conditions of approval, impacts on surrounding agriculture will be mitigated.
2. Aspen Springs will provide increased housing density while consuming less land. Encouraging development in this area may protect other areas in Ravalli County that are more conducive to agriculture.
3. The proposal will benefit agriculture in Ravalli County.

CRITERION 2: EFFECTS ON AGRICULTURAL WATER USER FACILITIES

Findings of Fact:

1. There are no water rights or irrigation infrastructure associated with this property.
2. There is a natural drainage that traverses the southeastern corner of the property. Water flows through the natural drainage during spring run-off. It does not appear that downstream properties have water rights, but this has not been confirmed. The applicant has proposed a 20-foot wide drainage easement centered on the natural drainage.
3. To ensure that the drainage remains clear and to mitigate any possible impacts on agricultural water user facilities, the applicant shall provide for a 20-foot wide drainage easement centered on the natural drainage on the final plat of Phase 26 and a notification of the stormwater drainage easement shall be included in the Notifications Document filed with the final plat (Conditions 1 and 10).
4. A public water system that will require a water right is proposed to serve most of the lots. DNRC will review the water right application to ensure that the public water system will not affect surface water rights. To mitigate impacts on agricultural water user facilities, the

applicant shall submit a Beneficial Water Use Permit from DNRC prior to the final plat approval of the first phase (Condition 3). (*Effects on Natural Environment*)

5. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on agricultural water user facilities. (Variance #1)

Conclusion of Law:

With the conditions of approval, agricultural water user facilities will not be affected by this proposal.

CRITERION 3: EFFECTS ON LOCAL SERVICES

Findings of Fact:

Road Access

1. MDT has jurisdiction over US Highway 93 and Eastside Highway and is planning to reconstruct the intersection of Eastside Highway and Eight Mile Creek Road in January of 2008. In a letter dated June 14, 2006, Dwane E. Kailey (Exhibit A-2), the District Administrator for MDT stated that Aspen Springs would impact the intersections of Eight Mile Creek Road with Eastside Highway and Eastside Highway with US Highway 93. Specifically, two lanes would need to be added to the round-about proposed at the intersection of Eight Mile Creek Road with Eastside Highway, which would cost \$88,182.00. To mitigate impacts on local services and public health and safety, the applicant shall submit \$88,182.00 to Ravalli County, which will be forwarded to MDT for improvements to the round-about at the intersection of Eight Mile Creek Road with Eastside Highway, prior to the final plat for the first phase (Condition 4). Staff also recommends that the applicant work with MDT to identify and mitigate the impacts of Aspen Springs on the intersection of Eastside Highway with US Highway 93 (Staff Recommendation).
2. The applicant is required to improve the portion of Eight Mile Creek Road leading to the subdivision to meet County Standards. The applicant has requested a variance from improving the road and is proposing to pay a proportionate share of the cost to improve Eight Mile Creek Road and staff is recommending denial. (Variance #8)
3. The applicant is required to improve the portion of Lower Woodchuck Road leading to the subdivision to meet County Standards. The applicant has requested a variance from improving the road and is proposing to improve the gravel portion of Lower Woodchuck Road with one design exception and pay a proportionate share of the cost to improve the paved portion of Lower Woodchuck Road. Staff will most likely recommend conditional approval once additional information is submitted, with the condition that the entire length of the portion of Lower Woodchuck Road leading to the subdivision meets the road standards amended August 4, 2005 with one design exception prior to the final plat approval of the first phase (Condition 5). (Variance #7)
4. To mitigate impacts on local services, a no ingress/egress zone shall be placed along the Lower Woodchuck Road frontage of the subdivision excepting the approaches approved by the Ravalli County Road and Bridge Department on the final plat of each phase with Lower Woodchuck frontage and a notification of the limitation of access shall be filed with the Notifications Document prior to final plat approval of the first phase (Conditions 1 and 11).
5. The applicant is proposing three entrances to Aspen Springs off Lower Woodchuck Road and an emergency access off Mountain View Drive. All traffic from Aspen Springs is proposed to be funneled onto Lower Woodchuck Road to the intersection with Eight Mile Creek Road. According to the application, 5,866 average daily trips will travel from Aspen Springs and enter the public road system via Lower Woodchuck Road.
6. Section 5-4-4(d) of the Ravalli County Subdivision Regulations requires that roads in a new development be connected to a right-of-way or easement in adjacent platted areas to allow for proper neighborhood traffic flow. Since Riverview Orchards Subdivision is a single platted area

adjacent to the south of Aspen Springs, a connection to one of the roads south of Aspen Springs is required. The proposed emergency access on Mountain View Drive would not allow for proper neighborhood traffic flow because it would only be used in emergency situations. The applicant is requesting a variance from this requirement and staff is recommending denial. (Variance #2)

7. Staff recommends that a new design with a connection from Aspen Springs south to Eight Mile Creek Road is submitted to the Planning Department for review before the public and the Planning Board (Staff Recommendation). To maximize traffic efficiency, it is recommended the connection be located as far east as possible to help disperse the high density areas in the southeast corner of the subdivision. The new road connection would serve as a primary access and would be required to meet County Standards. Since the roads adjoining to the southern boundary of Aspen Springs are all private, the Road Maintenance Agreement for Aspen Springs would have to include the private road connecting Aspen Springs to Eight Mile Creek Road. The portion of Eight Mile Creek Road that provides access to this route would also have to meet County Standards. Staff acknowledges that there are substantial challenges in securing a connection to the south, including legal access, steep slopes, easement width to meet County Standards, concerns from the neighbors, and possible wetlands, but in order to provide efficient traffic flow and road connectivity, there needs to be a connection other than Lower Woodchuck Road.
8. Any road connection to the south should be a continuous road name for street naming and E-911 purposes. For example, if a connection was proposed via Mountain View Road, the existing name of Madison Court would need to be changed to Mountain View Road.
9. Section 5-4-4(d) also states that if adjacent lands are vacant or un-platted, the road right-of-way or easement shall be extended and the street developed to the property line of the adjacent parcel, where appropriate to allow for proper inter-neighborhood traffic flow. The words "where appropriate" make this part of the Section a recommendation and not a requirement.
10. There is potential for development in adjacent un-platted areas to the north and there is an existing 60-foot wide private access easement between Lots E146 and E147 connecting to the north. Since there is Elk Winter Range in the northeast corner of the property and to the north of the property, staff does not encourage a future road connection to the north (*Effects on Wildlife and Wildlife Habitat*).
11. There is also potential for development in adjacent un-platted areas to the east of Aspen Springs. There is an existing 60-foot wide private road and utility easement connecting the proposed emergency access to the southeastern corner of the Aspen Springs property. To mitigate impacts on local services, specifically the road system, and to provide for future road connectivity in two locations, in addition to the existing 60-foot private easement in the southeastern corner of Aspen Springs, the applicant shall also provide for a conditional public road and utility easement over the same area and provide for a conditional public road and utility easement connecting the proposed cul-de-sac of Ruby Court to the property to the east. Future property owners of the property to the east will be able to utilize the easements if they develop the roads within the conditional easements to meet County Standards and join the Road Maintenance Agreement for the internal roads of the Aspen Springs Subdivision (Condition 12). To avoid duplication of road maintenance between the two groups of property owners and to further mitigate impacts on local services, the Road Maintenance Agreement filed with the final plat shall allow for other properties that have beneficial use of the internal subdivision roads once connecting roads are actually developed to be included as parties to this agreement without the consent of the property owners within the Aspen Springs Subdivision (Condition 6).
12. The subdivision was submitted under the old road standards, which were amended August 4, 2005. The applicant is requesting a variance from the old road standards and is proposing to build all internal roads to meet the amended road standards without design exceptions. The

Ravalli County Road and Bridge Department has approved the preliminary road plans (Exhibit A-3). Staff is recommending conditional approval of the variance based on the recommendation of the Ravalli County Road and Bridge Department. (Variance #6)

13. A preliminary Road Maintenance Agreement was submitted in the application and is required to be filed with the final plat of the first phase. To mitigate impacts on local services, a notification of the Road Maintenance Agreement shall be included in the Notifications Document (Condition 1).
14. To mitigate impacts on local services and to ensure traffic flow, internal road easements shall be labeled as public road and utility easements on the final plat of each phase (Condition 13).
15. To mitigate impacts on the road system and public health and safety, the proposed stop signs and road name signs shall be installed prior to the final plat approval of each phase (Condition 14).
16. A General Discharge Permit for Stormwater Associated with Construction Activity from the Montana Department of Environmental Quality, approach permits approved by the Ravalli County Road and Bridge Department for the accesses off Lower Woodchuck Road, road name petitions approved by the Ravalli County GIS Department for all internal roads, final road plans approved by the Ravalli County Road and Bridge Department, and engineer certification that all road improvements meet County Standards shall be submitted with the final plat application for each phase. All improvements are required to be completed prior to the final plat approval of each phase, unless a subdivision improvements guarantee with adequate security is accepted by the Board of County Commissioners.
17. There are stormwater drainage easements throughout the property and to mitigate impacts on local services, a notification of the stormwater drainage easements shall be included in the Notifications Document filed with the final plat (Condition 1).

Water and Sewer

18. Most of the lots will be served by a public water system and Lots E152 through E175 will have individual or shared wells (application). All lots will be served by a public wastewater treatment system with community drainfields (application). The public water system and wastewater treatment system proposals will be reviewed by the Montana Department of Environmental Quality (DEQ) and the Certificate of Subdivision Plat Approval from DEQ is a requirement of the final plat approval of each phase. (*Effects on Natural Environment*)
19. To mitigate potential impacts of this subdivision on any possible future public water and/or sewer systems that are created for the Eight Mile Creek Road area, or improvements to the road system, an RSID/SID waiver filed with the final plat of each phase shall address these services/facilities (Conditions 2 and 15).
20. A maintenance road is proposed off Sweet Grass Hills Road to service the water tank located up on the hill along the northern boundary of Aspen Springs. To mitigate impacts to local services, the maintenance road shall be constructed to have a minimum 12-foot wide, compacted gravel travel surface prior to the final plat of the phase when the water tank is constructed and the maintenance road shall be included in the Road Maintenance Agreement filed with the final plat of the first phase (Conditions 6 and 16).

Solid Waste

21. Bitterroot Disposal provides services to this site.

Schools

22. Correspondence between the applicant and the Florence-Carlton School District is documented in the application packet. The School District is requesting \$5,312.50 per lot and the developer is proposing \$150 per lot to be paid prior to the final plat approval of each phase.
23. To mitigate impacts on the Florence-Carlton School District, the applicant shall contribute an amount per lot (to be recommended by the Planning Board and approved by the Board of

County Commissioners in consultation with the subdivider) for each phase to be submitted prior to the final plat approval of each phase (Condition 17).

Fire

24. According to the application, the developer is proposing to donate Lot C4 to the Florence Rural Fire District and to provide fire hydrants, water flow, and water storage that will meet the standards of the Florence Rural Fire District. A letter from WGM to the Florence Rural Fire District dated April 27, 2005 documents correspondence at a meeting with the Fire District (application).
25. The Florence Rural Fire District has provided the County with their general policy recommendations and in an email to WGM dated June 26, 2006, Dan Martin, Chief of the Florence Rural Fire District, states that the District is interested in a land donation (Exhibits A-8 and A-9).
26. The water tank will not be constructed for the first few phases; therefore, water supply and flow for fire protection will not be available. To mitigate impacts on local services, specifically the Fire District, the applicant shall either meet the water supply requirements of the Fire District for each phase or provide a \$500 per lot contribution for each phase. In lieu of the \$500 per lot donation, the Fire District may accept a land donation (Condition 18). To further mitigate impacts on local services, provisions in the covenants shall address the posting of addresses and access requirements of the Fire District (Condition 2).

Law Enforcement

27. The Ravalli County Sheriff's Office provides law enforcement services to this area and in a letter dated June 17, 2005, Sheriff Hoffman stated that he is concerned about being able to provide adequate service to the citizens of Ravalli County.
28. The Sheriff's Office provides the same comment for most proposed subdivisions in Ravalli County; however, given the size and location of Aspen Springs, staff recommends that the applicant work with the Sheriff's Office to identify and mitigate the impacts of Aspen Springs on the Sheriff's Office (Staff Recommendation).

Parks

29. Approximately 16.11 acres of parkland are required to be dedicated for this proposal. The applicant is proposing to dedicate 163.45 acres.
30. The Park Board commented in two letters that they realize a need for parks in the Eight Mile Creek area, but do not think that parks on steep slopes or drainfields will provide recreational opportunities for the community. It appears that the Park Board is requesting a contribution from the developer to help create recreational parks in the Eight Mile Creek area.
31. The common area the developer is proposing covers important natural features and Elk Winter Range (*Effects on Natural Environment and Wildlife and Wildlife Habitat*). The value of the natural features and Elk Winter Range could be determined to be more important than the need for recreational parks in the Eight Mile Creek area.
32. Section 6-1-5(a)(4) states that land reserved for the protection of critical wildlife habitat may be used to fulfill parkland dedication requirements. There is Elk Winter Range in the northeast corner of the property and staff is recommending that Lots E124 through E151, which is about 13.0 acres, be removed from development and a new design be submitted to the Planning Department for the public and the Planning Board to review (Staff Recommendation). Along with the rest of the common area that is already proposed in the northeast corner, this would more than fulfill the parkland dedication requirement.
33. Section 6-1-5(g) states that if a land dedication is accepted as parkland dedication, the subdivider shall preserve or otherwise protect the land dedication for its intended purpose, which for private parks and common areas is typically a permanent dedication to the Homeowners' Association on the final plat. The proposed parkland dedication, as amended

through the conditions of approval shall be reflected as a permanent dedication on the final plat and/or protected by a conservation easement, deed restriction, or other appropriate mechanism.

Bike and Pedestrian Access

34. The applicant has verbally conveyed the desire that a trail system be constructed in Aspen Springs, but there are no plans at this time. Plans are being generated to develop a non-motorized transportation system in the Eight Mile area which will help protect public health and safety and improve traffic efficiency. Staff recommends that the subdivider develop bike/pedestrian pathways between Aspen Springs and Eight Mile Creek Road per Section 5-4-8. If there was a trail system through Aspen Springs, the residents of Aspen Springs may want a connection to Eight Mile Creek Road.

Miscellaneous

35. With additional information and mitigation, public services are adequate to serve this subdivision.
36. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on local services. (Variance #1)

Conclusions of Law:

1. If the roads leading to the subdivision are improved to meet County Standards, a road connection to the south is improved to meet County Standards, non-motorized transportation facilities are provided for off-site road connections, and public road and utility easements to the east are provided for future connectivity, then impacts on the road system will be mitigated.
2. With the conditions of approval, impacts to local services will be mitigated.

CRITERION 4: EFFECTS ON THE NATURAL ENVIRONMENT

Findings of Fact:

Surface Water

1. Located 300 feet east of the Bitterroot River, the property is situated high above the mapped floodplain on a bench.
2. There is a natural drainage that traverses from the northeast corner of the property to the southwest portion of the property (Natural Drainage #1) and another natural drainage that traverses the southeastern corner of the property (Natural Drainage #2). The Environmental Assessment indicated that water only flows through these natural drainages during spring runoff and heavy rainstorms or because of excess irrigation water flowing from upstream properties.
3. Most of the natural drainages and the areas surrounding them are proposed as common areas, but no-build zones are not proposed and there is the potential for construction within the common areas. Lots E124 through E151, Lot B227, and Lots B147 through B149 are proposed on natural drainages. To mitigate impacts on the natural environment, specifically surface water drainage, Lots E124 through E151 and Lots B147 through B149 should be removed from these areas and relocated to areas not constrained by natural drainages or wildlife habitat (Staff Recommendation) and these areas, along with the areas that are surrounding natural drainages that are currently proposed as common areas and the 20 feet centered on the portion of Natural Drainage #2 traversing the property, shall be shown as no-build zones on the final plat of each applicable phase, which does not apply to utilities, trails, or roads. A notification of the no-build zones shall also be included in the Notifications Document (Conditions 1 and 19). Map 2 delineates the general area of both Natural Drainage #1 and Natural Drainage #2 that should be a no-build zone. The drainage areas shown are based on 2004 aerial photographs and USGS Topographic maps.

Groundwater

4. A hydro-pneumatic system with two wells will serve the first few phases of the subdivision. A public water system with up to six wells and a 600,000-gallon water tank is proposed to serve the subdivision after the first few phases.
5. DEQ will review the public water system and a Certificate of Subdivision Plat Approval from DEQ is required to be filed for each phase with the final plat of each phase.
6. Water rights are required for the wells that will supply the public water system. The applicant has submitted a Source Water Delineation and Assessment Report by Maxim Technologies stating there is adequate water for the public water system (application). A report from Howard Newman, a hydrogeologist hired by the Florence Coalition Against Aspen Springs states that there may not be enough water (Exhibit A-12). There are several comments from DNRC stating that they have concerns about water supply (application and Exhibits A-10 and A-11). To mitigate impacts on the natural environment, a Beneficial Water Use Permit from DNRC shall be submitted for all the wells that will supply the public water system prior to the approval of the final plat of the first phase (Condition 3).
7. All lots will be served by a public wastewater treatment system with community drainfields and septic tanks. DEQ will review the public wastewater treatment system and a Certificate of Subdivision Plat Approval from DEQ for each phase is a requirement of final plat approval for each phase.
8. In a memo dated January 24, 2006, the Ravalli County Environmental Health Department stated they received adequate information for local subdivision review to occur (application).

Plant Species of Concern

9. The Montana Natural Heritage Program has identified that the sensitive species toothcup (*Rotala ramosior*), chaffweed (*Centunculus minimus*), and shining flatsedge (*Cyperus rivularis*) may be located in the sections that Aspen Springs is located within. The Environmental Assessment states that these plants grow on wet soils, usually around water bodies, and that field studies confirmed that these species are not present on the property or within 300 feet of the property (application).

Miscellaneous

10. To mitigate air pollution resulting from home heating emissions, the protective covenants filed with the final plat shall state that the primary heat source for any newly constructed residences must be at least 75% efficient (Condition 2).
11. An approved noxious weed and vegetation control plan is required to be filed with the final plat for each phase. According to MCA 7-22-2152, any person proposing a development that needs state or local approval and that results in the potential for noxious weed infestation within a weed district shall notify the weed board at least 15 days prior to activity. Consequently, 15 days prior to activities requiring a revegetation plan, such as road construction, the plan shall be submitted to the weed board for approval by the board. The applicant has proposed a provision in the covenants that the owners of each lot control noxious weeds. To mitigate impacts on the natural environment, a noxious weed control provision shall be included in the protective covenants filed with the final plat for this subdivision (Condition 2).
12. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on the natural environment. (Variance #1)

Conclusions of Law:

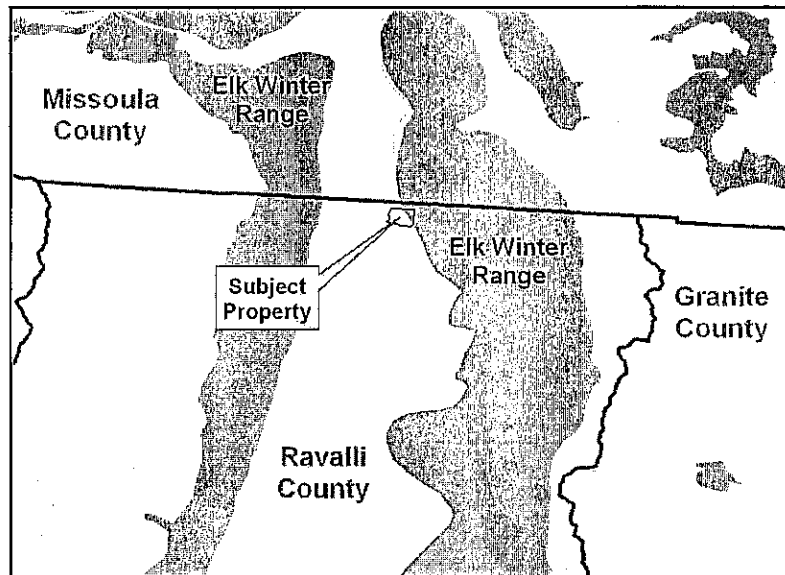
1. With the redesign of the development to remove lots located on natural drainages and relocate them to less constrained areas and addition of no-build zones on natural drainages, impacts from this subdivision on the natural environment will be mitigated.

2. With the conditions and requirements of final plat approval, impacts from this subdivision on the natural environment will mitigated.

CRITERION 5: EFFECTS ON WILDLIFE AND WILDLIFE HABITAT

Findings of Fact:

1. Map 3 shows Elk Winter Range boundaries in relation to Aspen Springs at a scale of 1:250,000. The data was created by FWP and the Rocky Mountain Elk Foundation at a scale of 1:250,000 and cannot be used at a larger scale (zoomed in closer to Aspen Springs). At this scale, it appears that a portion of the northwest corner of Aspen Springs is Elk Winter Range, but the boundary is coarse and should only be used for general planning purposes.



Map 3: Elk Winter Range
(Source Data: FWP)

2. Recommendations and comments from FWP from four letters dated March 9, 2005 (application), July 19, 2005 (Exhibit A-13), June 20, 2006 (Exhibit A-14), and June 22, 2006 (Exhibit A-15) are summarized as follows:
 - a. The general recommendation throughout all the letters is that there should be less density in the higher elevations in the northern and eastern portions of the property and more density in the southern and western portions of the property.
 - b. Common areas that are proposed on the ridges, hillsides, and along natural drainages were appreciated, as they would provide for wildlife corridors.
 - c. FWP highest concern was the lots in the northeast corner of the property and they specifically recommend that Lots E124 through E151 and associated roads be removed to mitigate impacts on important deer and elk winter range.
 - d. FWP is concerned about the lots in the eastern portion of the property (portions of Phases 30 through 33).
 - e. FWP is also concerned about the lots in the northwestern corner of the property (Phase 18).
 - f. FWP noted that natural drainages traverse Lots B147 through B149 and Lot B227 and that there should not be lots platted over natural drainages because they provide for wildlife corridors and habitat.
 - g. "Living with wildlife" provisions attached to the July 19, 2005 letter should be included in covenants.
3. In the application, the developer notes that the proposed project would remove about 45 acres

of Elk Winter Range from Hunting District 204, which represents a 0.05% loss of the total amount of winter range available in the hunting district.

4. To mitigate impacts on wildlife and wildlife habitat, the subdivision shall be redesigned to relocate Lots E124 through E151 to areas that are not constrained by wildlife habitat and natural drainages (Staff Recommendation), all natural drainages shall be protected with no-build zones (Conditions 1 and 19), and the "Living with wildlife" provisions provided by FWP shall be included in the covenants (Condition 2).
5. The Environmental Assessment states that the westslope cutthroat trout (*Oncorhynchus clarkii lewisii*) has been identified as a species of special concern by the Montana Natural Heritage Program. It also states that there are no westslope cutthroat trout in the project area (application).
6. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on wildlife and wildlife habitat. (Variance #1)

Conclusion of Law:

With the redesign of Lots E124 through E151 and the conditions of approval, impacts on wildlife and wildlife habitat will be mitigated.

CRITERION 6: EFFECTS ON PUBLIC HEALTH AND SAFETY

Findings of Fact:

Flood-prone Areas

1. The Bitterroot River floodplain does not affect this property.
2. Natural Drainage #1 and Natural Drainage #2 (Map 3) traverse the property. The Environmental Assessment indicated that water only flows through these natural drainages during spring runoff and heavy rainstorms or because of excess irrigation water flowing off-site from upstream properties.
3. Most of the natural drainages and the areas surrounding them are proposed as common areas, but no-build zones are not proposed and there is the potential for construction within the common areas. Lots E124 through E151 and Lots B147 through B149 are proposed on natural drainages. According to the Ravalli County Floodplain Administrator (Exhibit A-16), while the drainages do not have perennially flowing watercourses, the drainages may be subject to flash flood events which could carry a significant amount of discharge in a short amount of time during spring run-off or a heavy rainstorm. The uncontrolled development of flood-prone lands substantially degrades the health and safety of the community due to the risks of personal injury and property damage. To mitigate impacts on public health and safety, Lots E124 through E151 and Lots B147 through B149 that are proposed on the natural drainages shall be located away from the natural drainages (Staff Recommendation) and these areas, along with the areas that are surrounding natural drainages that are currently proposed as common areas and the portion of the natural drainage traversing Lot B227, shall be shown as no-build zones on the final plat of each applicable phase, which does not restrict utilities, trails, or roads, and a notification of the no-build zones shall be included in the Notifications Document (Conditions 1 and 19).

High Pressure Gas Line

4. A 10.0-inch buried high pressure gas line maintained by Northwestern Energy traverses the property. The applicant is requesting a variance from the requirement that a no-build zone is placed on land within 100 feet of the high pressure gas line and is instead proposing 25-foot setbacks on either side of the gas line (Variance Request #3). The Northwestern Energy Right-of-Way Development Provisions (Exhibit A-20) state: "No permanent structure will be built within 25 feet of [Northwestern Energy] pipeline without prior approval from [Northwestern

Energy].” This subdivision was submitted under the old regulations, which have since been amended to require 25-foot setbacks from the high pressure gas line.

5. In a letter dated April 28, 2006 (application), NorthWestern Energy states that the street crossings proposed over the high pressure gas line may be a problem and that they were going to conduct a survey to find the depth of the pipeline. No further correspondence has been submitted to the Planning Department. To mitigate impacts on public health and safety, the applicant shall submit a letter from NorthWestern Energy stating that all street crossings will not be a risk to public health and safety prior to the final plat approval of Phase 1 (Condition 7).
6. To further mitigate impacts on public health and safety due to the location of the high pressure gas line, a no-build zone within 25 feet of both sides of the high pressure gas line, as shown on the preliminary plat, shall be shown on the final plat of each applicable phase and a notification of the high pressure gas line shall be included in the Notifications Document filed with the final plat. (Conditions 1 and 20 and Variance #3)

Access

7. MDT has commented that Aspen Springs will affect the intersections of Eight Mile Creek Road with Eastside Highway and Eastside Highway with US Highway 93 (Exhibit A-2). To mitigate impacts on public health and safety, the developer shall contribute \$88,182.00 to the County to be paid to MDT for improvements to the intersection of Eight Mile Creek Road and Eastside Highway prior to the final plat approval of the first phase (Condition 4). Staff is also recommending that the developer work with MDT to identify and mitigate impacts to the intersection of Eastside Highway with US Highway 93 (Staff Recommendation). (*Effects on Local Services*)
8. Three accesses are proposed off Lower Woodchuck Road and an emergency access is proposed off Mountain View Drive. While the emergency access will likely provide for adequate access for public health and safety in the event of an emergency, it does not provide for efficient traffic flow and road connectivity, which could lend to congestion within the subdivision and on Lower Woodchuck Road (*Effects on Local Services*). The applicant is requesting variances from improving the paved portion of Lower Woodchuck Road and Eight Mile Creek Road and from a road connection to the south and staff is recommending that both roads are constructed to meet County Standards and a road connection to the south is improved. All internal roads are proposed to meet the new road standards, as amended August 4, 2005. (Variances #2, #6, #7, and #8)
9. Up to three phases are proposed to be filed each year over the next 10 to 20 years and turnarounds or through-roads will not necessarily be available for emergency vehicles until build-out. To mitigate impacts on public health and safety, temporary turnarounds with a turning radius of 50 feet and a compacted all weather travel surface that can accommodate emergency services vehicles shall be constructed for internal roads with each phase, when necessary to ensure emergency vehicles can easily access the subdivision (Condition 21).
10. The applicant has verbally conveyed the desire that a trail system be constructed in Aspen Springs, but there are no plans at this time. Plans are being generated to develop a non-motorized transportation system in the Eight Mile area which will help protect public health and safety and improve traffic efficiency. Staff recommends that the subdivider develop bike/pedestrian pathways between this subdivision and Eight Mile Creek Road per Section 5-4-8. If there was a trail system through Aspen Springs, the residents of Aspen Springs may want a connection to Eight Mile Creek Road.
11. With additional information and mitigation and with the conditions and requirements of final plat approval, access to the subdivision will be adequate for public health and safety. (*Effects on Local Services*)

Slopes Greater Than 25%

12. The shaded areas on the preliminary plat depict slopes greater than 25%. Section 5-2-2(a)(11) of the Ravalli County Subdivision Regulations requires no-build/alteration zones on slopes greater than 25% unless site design and building layout plans are submitted to address site constraints.
13. No-build/alteration zones are proposed on the slopes greater than 25% on Lots E67, E68, E141, E149, E150, and E196. Staff is recommending that Lots E141, E149, and E150 are relocated due to impacts on the natural environment and wildlife and wildlife habitat (Staff Recommendation). To mitigate impacts on public health and safety, no-build/alteration zones on the slopes greater than 25% in Lots E67, E68, and E196 shall be shown on the final plat of each applicable phase and a notification of these no-build/alteration zones shall be included in the Notifications Document (Conditions 1 and 22).
14. The applicant has submitted site design and building layout plans for the slopes greater than 25% on Lots E124 through E131, Lot E135, Lot E140, Lot E141, Lot E144, and Lots B147 through B149. The steep slopes are part of natural drainages and due to the impacts on natural environment and wildlife and wildlife habitat, staff recommends the relocation of these lots (Staff Recommendation). Site design and building layout plans have also been submitted for Lots B103, C7, E86, E108, E229, and E230, which show that the steep slopes, which are not part of any natural drainage, will be graded to provide for adequate homesites.
15. The developer is also proposing to construct roads, trails (not yet planned), and utilities over slopes greater than 25%. Site designs showing existing and proposed contours have been submitted with the application and are acceptable to staff.

Fire

16. The conditions that address the Florence Rural Fire District's general recommendations will mitigate impacts on public health and safety (Conditions 2 & 18).

Law Enforcement

17. The Ravalli County Sheriff's Office provides law enforcement services to this area and in a letter dated June 17, 2005, Sheriff Hoffman stated that he is concerned about being able to provide adequate service to the citizens of Ravalli County.
18. The Sheriff's Office provides the same comment for most proposed subdivisions in Ravalli County and previous subdivisions have not been required to mitigate the Sheriff's Office concerns. Given the size and location of Aspen Springs, staff recommends that the applicant work with the Sheriff's Office to identify and mitigate the impacts of Aspen Springs on the Sheriff's Office (Staff Recommendation).

Miscellaneous

19. A public water system and public wastewater system are proposed to serve most of the lots within the subdivision. (*Natural Environment*)
20. The preliminary plat and soils map indicate that about 50% of this subdivision may have soils rated as severe for road and building construction. To educate property owners and to mitigate potential impacts of this subdivision on public health and safety, a notification of the potential for severe soils shall be included in the Notifications Document filed with the final plat. A reduced plat showing the approximate locations of soils rated as severe for roads and building construction and descriptions of the severe soils in question shall be attached to the Notifications Document as an exhibit (Condition 1).
21. To mitigate impacts on public health and safety, the subdivider shall apply for County-issued addresses and a provision requiring property owners to post County-issued addresses at their driveways shall be in the covenants. (Conditions 2 and 23)

22. To mitigate the impacts of light pollution stemming from new construction, the protective covenants shall include a provision requiring full cut-off lighting with the exception of flag poles. (Condition 2)
23. There is a prevalence of radon in the County and to mitigate impacts on public health and safety, the covenants shall include a statement regarding radon exposure. (Condition 2)
24. The applicant has requested a variance so that Aspen Springs can be built out in 33 phases over a maximum of 20 years and staff is recommending approval. Phasing allows for the review of the cumulative impacts of the entire proposal on public health and safety. (Variance #1)

Conclusion of Law:

With the staff recommendations, mitigating conditions, and requirements of final plat approval, impacts to public health and safety will have been addressed.

COMPLIANCE WITH:

1) THE SURVEY REQUIREMENTS PROVIDED FOR IN PART 4 OF M.C.A. 76-3.

Finding of Fact:

The Seal of a Professional Land Surveyor or Engineer is required on all final plats, which states that the subdivision complies with part 4 of M.C.A. 76-3.

Conclusion of Law:

This proposal meets the survey requirements or conditions have been required to bring the proposal into compliance.

2) THE LOCAL SUBDIVISION REGULATIONS PROVIDED FOR IN PART 5 OF M.C.A. 76-3.

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision regulations provided for in part 5 of M.C.A. 76-3.
2. M.C.A. 76-3-203 allows a condominium exemption when the approval of the original division of land expressly contemplated the construction of the condominiums and any applicable park dedication requirements in 76-3-621 are met.
3. The developer is proposing a maximum of 35 condominium units on Lots C-1 through C-7 and will be eligible for a condominium review as a subdivision exemption provided that the units proposed on each lot do not exceed the following:
 - a. Lots C-1 through C-3 are allowed a maximum of nine units each.
 - b. Lots C-4 through C-7 are allowed a maximum of nine units each.

Conclusion of Law:

The developer has submitted a plan which complies with the requirements of local subdivision regulations or conditions have been required that will bring the plan into compliance.

3) THE LOCAL SUBDIVISION REVIEW PROCEDURE PROVIDED FOR IN THE RAVALLI COUNTY SUBDIVISION REGULATIONS

Findings of Fact:

1. Subdivisions are required to comply with the local subdivision review procedure provided for in the Ravalli County Subdivision Regulations.
2. A decision of the governing body rejecting or approving a proposed subdivision may be appealed to the district court within thirty (30) days of such decision. The petition shall specify the grounds upon which the appeal is made. An appeal may be made by the subdivider; a landowner with a property boundary contiguous to the proposed subdivision or a private

landowner with property within the unincorporated area of the county that can show a likelihood of material injury to the landowner's property or its value; a first class municipality if the subdivision is within three miles of its limits, a second class municipality if a subdivision is within two miles of its limits, a third class municipality or town if the subdivision is within one mile of its limits. An aggrieved party means a person who can demonstrate a specific personal and legal interest, as distinguished from a general interest, who has been or is likely to be specially and injuriously affected by the decision.

Conclusion of Law:

This development plan proposal has followed the necessary application procedure and has been reviewed within the procedures provided in Chapter 3 of the Ravalli County Subdivision Regulations.

CONSISTENCY WITH EXISTING ZONING AND COVENANTS

Findings of Fact:

1. The property is not located within a zoning district.
2. There are existing covenants on the property and the proposal is in compliance with the covenants.

Conclusions of Law:

1. Zoning does not apply.
2. The proposal is in compliance with existing covenants.

PROVISION OF EASEMENTS FOR UTILITIES

Findings of Fact:

1. The plat indicates existing utility easements are located along Lower Woodchuck Road and proposed internal easements are shown on the preliminary plat. Utility easements are required to be shown on the final plat.
2. According to the application, the proposed subdivision will be served by Ravalli Electric Cooperative, NorthWestern Energy, and Qwest Telephone. Utility certificates are a requirement of final plat approval.

Conclusion of Law:

Utility services are available to the subdivision.

PROVISION OF LEGAL AND PHYSICAL ACCESS

Finding of Fact:

Physical and legal access for this subdivision is proposed via Eight Mile Creek Road and Lower Woodchuck Road. (*Local Services*)

Conclusion of Law:

With the mitigating conditions and requirements of final plat approval, the proposal meets physical and legal access requirements.

VARIANCE REPORT

VARIANCE REQUEST #1

The applicant requested a variance from Section 3-2-21 of the Ravalli County Subdivision Regulations to allow for the project to have 33 phases filed over a maximum period of 20 years, instead of a maximum of two phases over a period of four years as allowed in the Subdivision Regulations. The proposed phasing plan allows for multiple phases to be filed in a year and final plats may be filed non-sequentially, regardless of the proposed timeline, if the necessary infrastructure is in place.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. If Aspen Springs was submitted as 33 individual subdivisions over a period of 20 years, the cumulative impacts of the entire project on public health, safety and general welfare, and adjoining land owners would be difficult to assess. With the proposed phasing plan, impacts to the public from the entire project can be properly assessed and mitigated.
2. Section 76-3-610 MCA allows for preliminary plat approval periods that are longer than the standard one to three years, if they are subject to a written agreement between the governing body and the subdivider. Subsection 2 also notes the governing body may not impose additional conditions after preliminary plat approval if final plat approval is obtained within the original or extended approval period.
3. The application states the granting of the variance will not be detrimental to the public health, safety or general welfare or injurious to other adjoining properties because required improvements will be installed prior to the filing of the final plat for each phase of the subdivision or the applicant will post a bond. It also states that adjoining property owners in Riverview Orchards to the south of the subdivision would prefer to have the timeframe for development of the subdivision extended longer than two phases over four years.
4. Regardless of whether the proposal comes through with an extended phasing plan or if the subdivision was split into multiple subdivisions that are reviewed and approved over the same period of time, DEQ and the County Environmental Health Department will review final plans prior to issuing a Certificate of Approval for each phase and will ensure the most current standards are applied.
5. With the proposal to allow for nonsequential filing of phases, it would be possible to file a phase that is dependent on infrastructure not scheduled for completion until a future phase.
6. To ensure adequate infrastructure is in place and to protect public health and safety, the following conditions shall be imposed: the proposed phasing plan shall be accepted and any changes to the order and dates of filing shall be submitted as a revised phasing plan(s) to the Board of County Commissioners for review and approval, phases shall be filed such that there are easements for necessary infrastructure in place if necessary, all necessary infrastructure for a phase shall be completed prior to filing the phase even if it is not scheduled to be finished until a future phase, and temporary road turnarounds shall be installed as necessary for each phase. (Conditions 21, 24, 25, and 26)

Conclusions of Law:

1. Impacts to public health, safety and general welfare and adjoining properties can be better assessed for a planned subdivision in phases than for multiple individual subdivisions.
2. With the mitigating conditions of approval, impacts of granting the variance on public health, safety and general welfare and on adjoining property owners have been addressed.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states the land mass of the subject property, which is required to complete a development of this type and scale, is unique to the property.
2. There are other large properties in the Bitterroot Valley that could support a similar type and scale of development for which a long term phasing plan might be requested.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the property.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

Physical conditions of the property do not affect the phasing of the development.

Conclusion of Law:

This criterion does not apply.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The application states the property is not zoned and an approval of the variance will not vary from the growth policy.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goals 1B: Promote private open land, farm land, ranch land and recognition of agriculture and forestry as valued land resources.

Countywide Policy 1.3: Encourage new development that allows continued agricultural and forestry activities. The intent of this policy is to minimize the adverse impacts of new development on agricultural and forestry operations; (i.e., nuisance litigation over weed spraying, dust, livestock odors and noise.)

- According to the variance application, phasing allows for a development of this size and scope because the developer can react to changes in the market and can recover some of the engineering and construction costs.
- Aspen Springs will provide increased housing density while consuming less land. Encouraging new development in this area may protect other areas in the County that are more viable for agriculture.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

Countywide Policy 4.2: Consider cumulative impacts of development.

- The applicant has requested a variance from the phasing limitations in the Subdivision Regulations. Although it is difficult to determine whether all impacts of the subdivision on the primary review criteria will have been mitigated 20 years into the future, reviewing the overall development plan for a long term phased subdivision allows the County to consider the cumulative impacts of development as compared to limiting review to a series of smaller subdivisions that would have to be reviewed individually. Mitigating conditions will protect the public and future land owners from taking on the costs of this development.

Conclusions of Law:

1. Provisions in the zoning district standards do not apply.
2. With the mitigating conditions, provisions in the Growth Policy appear to support granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. Mitigating conditions will prevent impacts of granting the variance on public costs. (Conditions 21, 24, 25, and 26)
2. By reviewing the entire project in phases instead of 33 individual subdivisions, potential costs to the public are easier to evaluate.

Conclusion of Law:

With the recommended conditions, impacts of granting the variance on public costs have been addressed.

VARIANCE REQUEST #2

The applicant has requested a variance from Section 5-4-4(d) of the Ravalli County Subdivision Regulations, which requires that roads in a new development be connected to a right of way or easement in adjacent platted areas to allow for proper inter-neighborhood traffic flow. The Section further states that if adjacent lands are vacant or un-platted, the road easement shall be extended and the road developed to the boundary of the proposed subdivision, where appropriate.

The applicant is proposing three accesses off Lower Woodchuck Road and one emergency access off Mountain View Drive. One existing road easement connecting to the north is also proposed. The applicant is requesting that no other road or road easement connections be required.

The Riverview Orchards Subdivision is adjacent to the southern boundary of Aspen Springs and, according to the preliminary plat, there are four road easements that connect the Riverview Orchards Subdivision to Aspen Springs. One connection from Aspen Springs to the Riverview Orchards Subdivision is required. The emergency access proposed off Mountain View Drive will not provide for "proper inter-neighborhood traffic flow" because it will only be used in emergency situations.

The four potential connections to the south are Cottonwood Drive, Meadow View Drive, Riverview Drive, and Mountain View Drive. Mountain View Drive, Meadow View Drive, and Cottonwood Drive do not have 60-foot wide easements, and there may not be legal access on Cottonwood Drive or Riverview Drive. Potential wetlands and steep slopes also pose challenges to a southern connection; however the application packet shows the emergency access connection with Mountain View Drive to be 7%.

Compliance with Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. At build-out, Aspen Springs is proposed to have a maximum of 671 units and contribute approximately 5,866 average daily trips to the road system (application). All of this traffic is proposed to be funneled onto Lower Woodchuck Road.
2. In an email chain dated June 27, 2006, David Ohnstad stated that because of the size and scope of Aspen Springs, there would be public health and safety concerns without a reasonably developed secondary access that could accommodate emergency response services. Mr. Ohnstad stated that the emergency access route should have full design width and structure, clear zones and no (locked) gates or other fixed obstacles. He also states that Mountain View Drive should be improved to meet County Standards (Exhibit A-6).
3. The applicant is proposing an emergency access off Mountain View Drive. The extension of Madison Drive south to the southern boundary of the subdivision is proposed to meet the new road standards and a knock-down gate is proposed. No improvements to Mountain View Drive are proposed.
4. Fewer accesses to the public road system exacerbate the potential for internal subdivision traffic congestion, which can lead to additional traffic conflicts. Road connectivity provides for efficient traffic flow and lower potential for traffic accidents.
5. The applicants state that the neighbors in the Riverview Orchards Subdivision have said they would not like the traffic generated from Aspen Springs through their neighborhoods. As proposed, the people living along Lower Woodchuck Road will experience the most traffic. If the traffic was dispersed to a road network with multiple routes to the public road system, the impacts of the Aspen Springs traffic would be equally dispersed throughout the Riverview Orchards Subdivision and therefore be less injurious to the property owners along Lower Woodchuck Road.
6. In the event of a road blockage on Lower Woodchuck Road, such as road maintenance or an emergency situation, there would be no alternative route for entering and exiting the subdivision without an access route to the south. The intent of the Subdivision Regulations is to optimize traffic safety and efficient traffic movement, which is problematic when you have all standard (non-emergency use only) access points on a single road, Lower Woodchuck Road. At this time Lower Woodchuck dead ends to the north. In regards to other road safety issues, the County Attorney's Office has advised us that to any extent that there is a finding of negative impact on review criteria from the design of this subdivision, the subdivision application should not be approved unless sufficient mitigation to minimize the potential dangers can be done. Approval without requiring sufficient mitigation or approval where mitigation is not possible to provide for adequate public and emergency access, exposes the County to significant liability in the event of a public emergency in the subdivision.

Conclusions of Law:

1. With an emergency access, impacts to public health and safety will be somewhat mitigated.
2. Without road connectivity, there may be negative impacts to the general welfare.
3. As proposed, adjoining properties along Lower Woodchuck Road will be disproportionately affected negatively by the increase in traffic.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Finding of Fact:

Aspen Springs is a proposed subdivision of 643 lots (671 units) on 392 acres, with a platted subdivision adjacent to the south property boundary and only three accesses onto one County-maintained road.

Conclusions of Law:

1. These are the conditions that warrant road connectivity.
2. The conditions on which the variance request is based are not unique to the property.

C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

There are steep slopes below the bench along the southern boundary of Aspen Springs.
There are slopes greater than 25% near the connection of Meadow View Drive.

Conclusion of Law:

There are some topographic limitations that might restrict the applicant from building a road connecting to the south, but the applicant has successfully created road plans for an emergency connection to Mountain View Drive that is at 7% grade.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

Countywide Policy 4.2: Consider the cumulative impacts of development.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- A development of this size and scope should not only have a secondary, emergency access, but should provide road connectivity for efficient traffic flow.

Conclusions of Law:

1. Zoning does not apply.
2. The Growth Policy does not support granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. Aspen Springs will add an estimated 5,866 trips per day. The applicant is only proposing access onto Lower Woodchuck Road, a County-maintained road.
2. If the variance request is approved, the traffic on Lower Woodchuck Road will degrade the road much faster than if the traffic were dispersed to a second primary route to the south.

Conclusion of Law:

There will be an increase to public costs if the variance request is granted.

VARIANCE REQUEST #3

The applicant has requested a variance from Section 5-2-2(a)(13) of the Ravalli County Subdivision Regulations, for relief from the requirement that a no-build zone within 100 feet of the high pressure gas line traversing the western portion of Aspen Springs be shown on the final plat.

Compliance with Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. A high pressure gas line with a 10.0-inch diameter, owned and operated by NWE, traverses the property. The gas line is within a 50-foot public utility easement.
2. Finding 5-2-1(4) of the Subdivision Regulations in place at the time of the application submittal states that a 50-foot wide setback from the high pressure gas line would reduce impacts to public health and safety and Section 5-2-2(a)(13) of the Subdivision Regulations states that land within 100 feet of a high pressure gas line shall be a no-build zone on the final plat. Finding 5-2-1(4) and Section 5-2-2(a)(13) were not consistent. The Subdivision Regulations were amended August 4, 2005 to require a 25-foot setback from high pressure gas lines, but since Aspen Springs was submitted prior to this date, the 100-foot setback applies.
3. The NWE Right-of-Way Development Provisions state: "No permanent structure will be built within 25 feet of [NorthWestern Energy's] pipeline without prior approval from [NorthWestern Energy]" (Exhibit A-20).
4. The applicant is proposing to show a 50-foot wide no-build zone centered on the high pressure gas line on the final plat, as shown on the preliminary plat.
5. To mitigate impacts on public health and safety, a 50-foot no-build zone centered on the high pressure gas line shall be shown on the final plat of each applicable phase, as proposed on the preliminary plat, and a notification of the high pressure gas line shall be included in the Notifications Document (Conditions 1 and 20).
6. In a letter from NWE to the developer, NWE stated that they had concerns about the street crossings over the high pressure gas line (application). To mitigate impacts on public health and safety, the applicant shall submit a letter from NorthWestern Energy stating that the street crossings of the high pressure gas line will not be a risk to public health and safety prior to the final plat approval of the first phase (Condition 7).

Conclusion of Law:

With the mitigating conditions of approval, impacts of granting the variance on public health and safety will be reduced.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005 from 100-foot setbacks from the gas line to 25-foot setbacks. The Aspen Springs application was submitted prior to the amendment.

Conclusion of Law:

The conditions upon which the variance is requested are unique to the subject property.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

There is sufficient area on the property for 100-foot setbacks from the gas line and topography does not affect the placement of easements.

Conclusion of Law:

There do not appear to be physical conditions preventing the applicant from meeting the Subdivision Regulations.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. There is no zoning on this property.
2. The goals and policies in the Ravalli County Growth Policy do not appear to address this variance or related public health and safety issues.

Conclusion of Law:

Provisions in the zoning and the Growth Policy do not appear to apply to this request.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

If the high pressure gas line was ruptured, there may be costs associated with providing emergency services. To lessen the chance of a rupture, the 50-foot no-build zone on the preliminary plat shall be shown on the final plat, a notification of the gas line shall be included in the Notifications Document in accordance with NWE policies, and the applicant shall provide a letter from NWE stating the street crossings of the high pressure gas line will not be a risk to public health and safety (Conditions 1, 7, and 20).

Conclusion of Law:

With the recommended conditions of approval, impacts on public costs will be reduced.

VARIANCE REQUEST #4

The applicant requested a variance from Section 5-2-2(b)(2) of the Ravalli County Subdivision Regulations, for relief from the requirement that "each lot have an area sufficient for a practical building site of at least 7,500 square feet..." because there are 152 lots proposed within Aspen Springs that will not meet this requirement. The proposed minimum lot size is 3,972 square feet and the average lot size is 10,460 square feet.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. The proposal is to vary from the minimum building area of 7,500 square feet as required in the Regulations for 152 lots within Aspen Springs. The proposed minimum lot size is 3,972 square feet, with an overall average lot size of 10,460 square feet.
2. The minimum lot size within the subdivision is larger than the traditional lots platted in most existing towns, which are typically 25 to 30 feet wide by 125 feet deep.
3. The application states that smaller lots within this subdivision will have detached garages accessed via an alley, which can be considered safer because this allows for access from both the front and rear of the lot and the residents will be accessing their homes via alleys instead of the busier streets. No parking will be allowed in the alleys.
4. To mitigate impacts on public health, safety and general welfare by having buildings too close to one another such that fire could spread easily between structures a minimum five-foot wide side yard setback shall be included in the covenants filed with the final plat (Condition 2). This minimum setback is based on a quick survey of side yard setbacks for zoning districts in other jurisdictions that have a minimum lot size between 5,000 and 10,000 square feet.

Conclusion of Law:

With the mitigating condition, granting the variance will not result in adverse impacts on public health and safety or be injurious to adjoining landowners.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states that the proposal is unique because it offers a variety of housing types and lot sizes, which will provide opportunities for homeownership for a broad range of residents. The smaller lots will allow for more affordable market rate housing.
2. The variance does not appear to be based on unique features of the property.
3. The Montana Board of Housing has indicated that affordable housing is difficult to find in this area, in large part due to the cost of land and infrastructure (Exhibit A-18). Their typical home buyer is a hard working Montana family with an average annual income of about \$35,000. They note that "all rapidly growing communities need to consider higher density housing developments on communal water and sewer systems to offer the only opportunity for new construction homes to fit the incomes of many Montana Board of Housing buyers."

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property; however, they are unique to the proposal.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The application states the ridgelines and bowl features of the property, as well as its horizontal and vertical separation from the neighboring Riverview Orchards make this property unique and these features allow for clustering development away from the ridgelines and buffering the neighboring properties. The proposal is also focused on clustering development on smaller lots to allow for large tracts of open space. The applicant also argues that the higher density

- development allows for more amenities. A development that met the minimum building area on each lot would result in less open space and potentially fewer neighborhood amenities.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations; however, it appears it would be more difficult to achieve the project goals with the minimum building area of 7,500 square feet.

D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The property is not zoned.
2. The variance will not vary provisions in the Growth Policy; however some general goals and policies supporting voluntary open space programs and provision of quality affordable housing may support granting the variance request.

Conclusion of Law:

Zoning does not apply and the Growth Policy may support granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

The variance will not result in increases to public costs and the application argues granting the variance will actually increase the tax base for the County.

Conclusion of Law:

Granting the variance will not increase public costs.

VARIANCE REQUEST #5

The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) that if not designed as flag lots would likely have resulted in additional road construction.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. The applicant requested a variance from Section 5-2-2(a)(7) of the Ravalli County Subdivision Regulations to allow for 6 flag lots (B110, B126, B133, B134, E93, E126) within the subdivision, and consequently has avoided additional roadway construction that would likely have been needed to accommodate a "non-flag lot design".
2. The proposed flag lots all have "poles" shorter than 150 feet in length, which is the distance most fire districts in the Valley are willing to travel before they require an 18 to 20 foot wide compacted all weather surface instead of a standard driveway to provide safe access, particularly for emergency services providers.
3. No impacts to adjoining property owners are anticipated from the granting of the variance request.

Conclusion of Law:

No impacts to public health and safety or general welfare or injury to adjoining property owners are anticipated from the granting of the variance request.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states the design that includes flag lots will help to further preserve the natural features of the site without the extra site disturbance that would be required through additional road construction.
2. The application does not identify conditions upon which the variance is requested that are unique to the property.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property; however, they are somewhat unique to the proposal.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The application states the rolling topography of the site and the natural features encourage the use of flag lots and these lots help prevent excessive infrastructure development and costs.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.

D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The property is not zoned.
2. The provisions of the Growth Policy do not apply to the variance request.

Conclusion of Law:

Neither zoning nor the Growth Policy applies.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

No increases in public costs are anticipated from the granting of the variance request.

Conclusion of Law:

Granting the variance will not increase public costs.

VARIANCE REQUEST #6

The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow all of the internal subdivision roads to meet the new road standards, as amended August 4, 2005, instead of the standards in place at the time of subdivision application submittal.

Compliance with Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

3. The developer is proposing an internal road network to access the lots within the subdivision. The developer is requesting a variance from the road standards in place at the time of application submittal and is instead proposing to construct the roads to the new road standards, as amended August 4, 2005, without any design exceptions.
4. The road plans have been approved under the new road standards by the Road Department and the Road Department recommends approval of this variance (Exhibit A-3). To mitigate impacts on public health and safety, the applicant shall construct the internal roads to meet County Standards, as amended August 4, 2005 (Condition 27).

Conclusion of Law:

With the mitigating condition, the granting of the variance will not have impacts on public health, safety, and general welfare or adjoining properties.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Finding of Fact:

The Ravalli County Subdivision Regulations were amended August 4, 2005, and the Aspen Springs application was submitted prior to the amendments to the road standards.

Conclusion of Law:

The conditions upon which the variance is proposed are unique to the property.

C. Physical conditions, such as topography or parcel shape, prevent the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Finding of Fact:

There are slopes greater than 25% on the property, but it would not prevent the applicant from building the internal roads to the road standards in place at time of application submittal.

Conclusion of Law:

No physical or topographic limitations have been identified that would restrict the applicant from meeting the road standards in place at the time of application submittal.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A

system of “nexus and proportionality” will govern external infrastructure costs attributable to the developer.

- New provisions in the Subdivision Regulations were adopted August 4, 2005, while this proposal was involved in the subdivision process.
- To ensure that the developer will be providing the necessary infrastructure, the applicant shall construct all internal roads to meet County Standards, as amended August 4, 2005 (Condition 27).

Conclusions:

1. Zoning does not apply.
2. With the mitigating conditions, the Growth Policy supports granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

The applicant will be responsible for constructing the roads to meet the current Subdivision Regulations (Condition 27).

Conclusion of Law:

There will not be an increase to public costs.

VARIANCE REQUEST #7

The applicant has requested a variance from Chapter 5, Article 4 of the Ravalli County Subdivision Regulations, to allow the developer to reconstruct the gravel portion of Lower Woodchuck Road to meet the road standards, as amended August 4, 2005, with a design exception, and pay a portion of the cost to improve the paved portion of Lower Woodchuck Road to meet County Standards. The design exception is to lower the design speeds on the curves where Lower Woodchuck Road intersects with Slack Lane and Sapphire Lane.

The Ravalli County Road and Bridge Department’s consulting engineer has recommended that a Level of Service (LOS) analysis be completed by the developer and that guardrails be installed on the curves, if warranted. As the staff report was being completed, the applicant submitted a LOS analysis and documentation that the guardrails are not warranted (this information will be forwarded to the Planning Department prior to the public hearing), but the Road and Bridge Department’s consulting engineer has not yet responded. Staff recommends that no decision is made on the variance until a review of the new information has taken place.

Compliance with Variance Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. Based on the Trip Generation 7th Edition, Aspen Springs will add an estimated 5,866 trips per day to Lower Woodchuck Road (application).
2. Lower Woodchuck Road is currently classified as a Major Local Access – Agricultural Access roadway. From Eight Mile Creek Road to Slack Lane, Lower Woodchuck Road is paved, but does not meet County Standards. From Slack Lane north to the subdivision, Lower Woodchuck Road is gravel and does not meet County Standards. There are two curves located where Lower Woodchuck Road intersects with Slack Lane and the proposed Sapphire Lane that are close to 90 degrees.

3. The Subdivision Regulations require that the entire length of Lower Woodchuck Road be improved to meet the Standards in place at the time of application submittal, which was prior to the August 4, 2005 amendments.
4. The developer is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards with a design exception for speeds on the two curves. The developer is proposing mitigation which includes advanced warning signs to notify drivers of the curve, and a super-elevated roadway to improve sight distances, shoulder widths, and an improved travel surface.
5. Because Lower Woodchuck Road is a lower-classified road (Major Local Access), the applicants are not able to obtain additional easement to design a high-speed road, and because the applicant is proposing mitigation, the Road and Bridge Department recommends approval of the design exception. The consulting engineer noted that guardrails on the curves and a Level of Service (LOS) analysis may be warranted (Exhibit A-7). The applicant submitted a response as this report was being completed, so the documentation will be forwarded to the Planning Board before the hearing. The consulting engineer has not yet reviewed the information and staff recommends no decision is made on the variance and design exception until the consulting engineer done a review (Staff Recommendation).
6. If further information is submitted and to mitigate impacts on public health and safety, staff would recommend the condition that the developer install advanced warning signs in conformance with the Federal Manual on Uniform Traffic Control Devices near the curves where Lower Woodchuck Road intersects Slack Lane and Sapphire Lane. The developer should also install guardrails at these intersections, if they are warranted (Conditions 8 & 9).
7. The developer is not proposing to improve the paved portion of Lower Woodchuck Road (from Eight Mile Creek Road north to Slack Lane), but is proposing to pay a portion of the cost to improve this portion of Lower Woodchuck Road to County Standards.
8. In an email dated June 21, 2006 (Exhibit A-4), David Ohnstad states, "The current 'design' and condition of the roadway may be nominally acceptable for current traffic volumes, but would not be appropriate for the potentially large volume of traffic generated by the Aspen Springs project. Significant increases in volume on this roadway, without improvement, may create unsafe conditions for current users as well as new residents." To mitigate impacts on public health and safety, and to ensure proper conditions for future users of the roadway, staff recommends that the applicant conduct a Level of Service (LOS) analysis on Lower Woodchuck Road and that if the variance is approvable after this information is submitted, the applicant improve the paved portion of Lower Woodchuck Road to meet the County road standards, as amended August 4, 2005 (Staff Recommendation and Condition 5).

Conclusions of Law:

1. The consulting engineer has requested additional information (LOS analysis) and without a review of this information, all of the impacts cannot be ascertained.
2. With the mitigating condition, the applicant would be required to improve the entire length of Lower Woodchuck Road that provides access to Aspen Springs to meet the Road Standards, as amended August 4, 2005, with one design exception. This may mitigate impacts on public health and safety.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The Ravalli County Subdivision Regulations were amended August 4, 2005. The Aspen Springs subdivision was submitted on June 17, 2005.
2. This property is accessed by a substandard County road, and the applicant has been unable to purchase easement to achieve a design speed of 40 MPH where Lower Woodchuck Road intersects Slack Lane and Sapphire Lane.

Conclusion of Law:

The conditions upon which the variance is proposed are somewhat unique to the property.

C. Physical conditions, such as topography or parcel shape, prevents the applicants from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. There is currently a 60-foot wide easement on the entire portion of Lower Woodchuck Road leading to Aspen Springs.
2. The current location of the easement and right of way width for Lower Woodchuck Road at Slack Lane and Sapphire Lane may prevent the applicant from achieving a design speed of 40 mph. The applicant has made an effort to purchase additional easement to widen the curves, but has not been successful.

Conclusion of Law:

There are physical or topographic limitations that may restrict the applicant from achieving a design speed of 40 mph on the curves, but there are no physical conditions preventing the applicant from improving Lower Woodchuck Road to meet the rest of the standards.

D. The variance will not in any manner vary the provision of the zoning regulations or the Growth Policy.

Findings of Fact:

1. Zoning does not apply to this property.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.4: Improve and maintain existing infrastructure and public services.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- The applicant is proposing to improve the gravel portion of Lower Woodchuck Road to meet the new road standards, but is not proposing to improve the paved portion. There is still outstanding information regarding the curves.
- Aspen Springs is expected to contribute over 97% of the traffic on Lower Woodchuck Road, a substandard County-maintained road. To mitigate impacts on the existing road network, the applicant shall improve the entire length of Lower Woodchuck Road leading to Aspen Springs to meet the new road standards, with one design exception (Condition 5).

Conclusions of Law:

1. Zoning does not apply.
2. With the mitigating condition, the Growth Policy supports granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Finding of Fact:

To mitigate impacts on public costs, the applicant shall improve Lower Woodchuck Road to meet the new road standards, with one design exception (Condition 5).

Conclusion of Law:

With the mitigating condition, there will not be an increase in costs to the public by granting this variance.

VARIANCE REQUEST #8

The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that the portion of Eight Mile Creek Road that leads to Aspen Springs be reconstructed to meet County road standards prior to final plat approval because the subdivision has more than 21 lots. The applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road (\$43,981) based on current traffic projections and estimated cost of improvements. The road contribution is proposed to be paid proportionately at the final plat of each phase based on the number of lots in each phase.

Compliance with Review Criteria

A. The granting of the variance will not be substantially detrimental to the public health, safety or general welfare or injurious to other adjoining properties.

Findings of Fact:

1. According to the application, Aspen Springs will generate 5,866 trips per day to Eight Mile Creek Road, or an estimated 57% of the traffic load, assuming that a number of proposed subdivisions are approved and filed.
2. The applicant requested a variance from Section 5-4-5(b)(4) of the Ravalli County Subdivision Regulations, which requires that Eight Mile Creek Road be reconstructed to meet the County road standards in place at the time of submittal prior to final plat approval because the subdivision has more than 21 lots. Although the variance only refers to the north-south portion of Eight Mile Creek Road, with the requirement for a second access to the subdivision, the subdivider is responsible for improvements to Eight Mile Creek Road to the intersection of the second access road and Eight Mile Creek Road.
3. To mitigate impacts of granting the variance, the applicant is proposing to pay the equivalent of the pro rata share (57%) of the cost of improvements to Eight Mile Creek Road (\$43,981) based on current traffic projections and estimated cost of improvements. The actual pro rata calculation required under the Subdivision Regulations is based on figures determined at final plat approval.
4. The County Road Supervisor made the following comment (Exhibit A-5), "The granting of this variance **may prove detrimental** to the public health, safety or general welfare or injurious to other adjoining properties. The N/S segment of Eight Mile Creek Road is functionally classified as a Major Collector roadway with a current ADT of 2113 and currently serves as the only access for ranches and other property in the Lower Woodchuck corridor. The current average Pavement Condition Index for this segment of Eight Mile Creek Road is six (on a ten scale). The current "design" and condition of the roadway are not sufficient for the current level of traffic. If the traffic levels were (more than doubled) as a result of this project, without improvements to the roadway, current users as well as new residents may be subject to compromised safety. Also, the current design of the intersection of Eight Mile Creek Road and Lower Woodchuck Road would not safely accommodate the significantly increased traffic volumes arising from this project."

Conclusion of Law:

Granting the variance will have adverse impacts on the public health and safety and adjoining property owners.

B. The conditions on which the request for a variance is based are unique to the property on which the variance is sought and are not applicable generally to other property.

Findings of Fact:

1. The application states that the proposal is unique because it is a master planned community and it is not economically feasible or fair to place the burden of improving Eight Mile Creek Road on this developer.
2. No conditions unique to the property were identified as the basis of the variance request.
3. The County Road Supervisor noted that the conditions upon which the variance was granted are not unique to the property.

Conclusion of Law:

The conditions upon which the variance is proposed are not unique to the subject property.

C. Physical conditions, such as topography or parcel shape, prevent the applicant from meeting the strict letter of these regulations. These conditions shall not result from the past actions of the land's current or previous owner(s).

Findings of Fact:

1. The application states there are no physical conditions that prevent the applicant from meeting the strict letter of the regulations. It argues that paying the equivalent of the pro rated share of the cost of improving Eight Mile Creek Road with the filing of each phase, based on the figures estimated at preliminary plat review, is more logical.
2. No physical conditions have been identified that prevent the applicant from meeting the strict letter of these regulations.
3. The County Road Supervisor stated the physical conditions do not prevent the applicant from meeting the strict letter of the regulations.

Conclusion of Law:

The physical conditions of the property do not prevent the applicant from meeting the strict letter of the regulations.

D. The variance will not in any manner vary the provisions of the zoning regulations or the Growth Policy.

Findings of Fact:

1. The property is not zoned.
2. Relevant countywide provisions in the Ravalli County Growth Policy are outlined below. Provisions of the Ravalli County Growth Policy are followed by an analysis (bulleted points) of the variance request against these provisions.

Countywide Goal 4: Provide necessary infrastructure and public services to accommodate population growth and new development without undue impacts on the quality, quantity and cost of service to existing residents.

Countywide Policy 4.1: Encourage development that will minimize or avoid additional costs to existing taxpayers.

Countywide Policy 4.2: Consider cumulative impacts of development.

Countywide Policy 4.5: Developers will be responsible for providing the infrastructure necessary within the development such as community water, sewage treatment and roads. A

system of "nexus and proportionality" will govern external infrastructure costs attributable to the developer.

- This section of the Ravalli County Subdivision Regulations was adopted by the Board of County Commissioners in August of 2005, after the Growth Policy was adopted.
- The proposed mitigation could be argued to meet Policy 4.5; however, without full payment of the pro rata equivalent it will be difficult to ensure the actual improvements are made to Eight Mile Creek Road, in part due to the fact that the phasing variance means the County cannot wait until the full contribution is made because it will not be made within the 7 year time frame. Furthermore, the proposal is to base the pro rata equivalent on the current cost of improvements and traffic loads; however, the true proportionality test would require that the cost estimates and traffic counts be completed with each phase.

Conclusion of Law:

Zoning does not apply and the Growth Policy provisions both support and reject granting the variance request.

E. The variance will not cause a substantial increase in public costs.

Findings of Fact:

1. The application states the variance will not result in increases to public costs.
2. The County Road Supervisor stated, "**The variance will cause a substantial increase in public costs.** The roadway will need to be improved in order to support the additional demand placed upon it by the proposed subdivision. Absent the project owner making those improvements, upon the arrival of subdivision residents, and given that the roadway is a county-operated facility, the public would be faced with the potential of increasing the level of service on the roadway to satisfy that added demand."

Conclusion of Law:

Granting the variance will increase public costs.